IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2374 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE P.B.MAJMUDAR

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1. Whether Reporters of Local Papers may be allowed to see the judgement? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

KARSHANBHAI VAGHJIBHAI VAGHELA

Versus

STATE OF GUJARAT

Appearance:

MR IS SUPEHIA for the Petitioner.

Mr.Joshi, Assistant GOVERNMENT PLEADER,

for Respondent No. 1-3

CORAM : MR.JUSTICE P.B.MAJMUDAR

Date of decision: 07/08/2001

ORAL JUDGEMENT

1. By this petition, the petitioner has prayed for necessary direction regarding payment of pension as well as gratuity amount.

2. The petitioner was appointed as a Rojamdar from 1.1.1960 and he served as a Rojamdar upto 6.1.1987. From

7.1.1987, he was appointed as a Work-charged employee and ultimately, he retired on 30.11.1993. So far as the question about his service as Rojamdar from 1.1.1960 is concerned, the same as such is not in dispute as the Controlling Authority under the Payment of Gratuity Act in Gratuity Application No. 33 of 1998 has passed an order of payment of gratuity considering the services of the petitioner from 1.1.1960 and the Department is directed to pay Rs.40,390/- with interest at the rate of 10% per annum from 1.1.1994 to the petitioner. It is the say of the petitioner that even though he had retired since long, the Department has not finalized his pension nor the order of the Controlling Authority under the Payment of Gratuity Act complied with except paying the sum of Rs.11,235/-. This petition is, therefore, filed for the purpose of getting pensionary benefits as well as for getting the remaining dues of gratuity, as, according to Mr.Supehia, the gratuity is paid to the petitioner considering the period of his service from 7.1.1987 and the prior period has not been considered for the purpose of payment of gratuity, even though the Controlling Authority under the Payment of Gratuity Act has directed the Department to pay gratuity considering the services of the petitioner from 1.1.1960. The said order is neither challenged by the Department further, nor is it complied with.

3. The question which is required to be considered in this petition is whether the petitioner is entitled to pensionary benefits from the date of his appointment as Rojamdar from 1960 or from the date on which he was appointed as Work-charged employee in the year 1987.

4. On behalf of the respondents, affidavit-in-reply has been filed by one M.M. Patel, Deputy Executive Engineer, R & B Sub-Division, Surendranagar. In paragraph 4 of the reply, reliance is placed on some Government letter dated 26.8.1996. However, the same is not annexed with the reply. Therefore, it is not possible for the Court to know the contents of the said letter. It is stated in paragraph 5 of the reply that the order of the Controlling Authority under the Payment of Gratuity Act dated 31st August, 1998 is not accepted by the Department. It is stated that the petitioner would be entitled to Rs.11,235/- only by way of gratuity and the same is paid to the petitioner.

5. It is not in dispute that the Controlling Authority under the Payment of Gratuity Act has already passed an Award of Rs.40,390/-, treating the services of the petitioner from 1.1.1960. The said order is not

challenged further by the Department. Still, the deponent has the audacity to say that the Department has not accepted the aforesaid Award. Such defence is not available with the Authority when there is already a pronouncement by the Authority under the Payment of Gratuity Act and the said decision is binding between the parties. In my view, therefore, the respondents have acted absolutely arbitrarily in not making the payment to the petitioner as per the Award of the aforesaid Authority. The petitioner, therefore, is undoubtedly entitled to the remaining amount as per the order of the aforesaid Authority and the said amount is required to be paid to the petitioner forthwith, with interest as ordered by the Authority.

6. So far as the question of pension is concerned, it is required to be noted that the petitioner was appointed as a Rojamdar from 1.1.1960 and, ultimately, he qualified as Work-charged employee from 7.1.1987. It is the say of the petitioner, therefore, that his total period of service should have been computed for the purpose of pension and the period on which he worked as a Rojamdar was required to be taken into consideration. For that purpose, Mr.Supehia has relied upon the judgment of this Court in Special Civil Application No.3595 of 2001. This Court, relying upon the judgment of a Division Bench, allowed that petition, directing the Department to compute the period during which the husband of the petitioner of that petition had worked as Rojamdar for the purpose of fixing the pensionary benefits. In the decision dated 6.8.1998, rendered by a Division Bench of this Court in Letters Patent Appeal No.1495 of 1997, the Division Bench, after considering the Resolution of the Government dated 17th October, 1988, has held that the appellant in that case, who had completed 240 days and was continuously in service for a period of more than ten years as Rojamdar was entitled to the benefits of pension. On the basis of the aforesaid judgment of the Division Bench in the Letters Patent Appeal, this Court had allowed Special Civil Application No. 3595 of 2001.

7. So far as the present petition is concerned, the respondents have not disputed the fact that the petitioner was serving as a Rojamdar from 1.1.1960. The Controlling Authority under the Payment of Gratuity Act has also given finding on that basis as per the order at Annexure `D'. In that view of the matter, the petitioner is also entitled to get the pensionary benefits on the basis of his services with effect from 1.1.1960 and the entire period from 1.1.1960 till he retired by way of superannuation is required to be counted and computed for

the purpose of pensionary benefits. In that view of the matter, the respondents are directed to fix the pension of the petitioner accordingly on the aforesaid lines and the amount of pension may accordingly be paid to the petitioner after finalizing his pension case and calculating the pension on the aforesaid lines. The Department is, therefore, directed to fix the pension of the petitioner accordingly, treating his services from 1.1.1960. The decision may be taken by the Department within a period of two months from the date of receipt of the writ from this Court and whatever amount is required to be paid on the basis of the said fixation may be paid within a period of one month therafter. If there is any further delay, the petitioner will be entitled to interest at the rate of 12% per anum for the entire amount if the amount is not paid within a period of one month, as ordered above. The difference in gratuity, as indicated above, is also ordered to be paid within a period of one month from the date of receipt of writ from this Court.

Rule is made absolute accordingly, with no order as to costs.

Writ to be sent forthwith.

7th August, 2001 (P.B. Majmudar, J.)

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(apj)